

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

CIVIL ACTION NO: 4:21-cv-00270

CLIFFORD F. TUTTLE, JR.,  
REPRESENTATIVE OF THE ESTATE OF  
DENNIS W. TUTTLE, DECEASED, ROBERT  
TUTTLE, and RYAN TUTTLE,  
Plaintiffs,

vs.

CITY OF HOUSTON; GERALD GOINES, in  
his individual capacity; STEVEN BRYANT,  
in his individual capacity; FELIPE  
GALLEGOS, in his individual capacity;  
ERIC SEPOLIO, in his individual capacity;  
MANUEL SALAZAR, in his individual  
capacity, THOMAS WOOD, in his individual  
capacity, OSCAR PARDO, in his individual  
capacity; FRANK MEDINA, in his individual  
capacity; CLEMENTE REYNA, in his  
individual capacity; CEDELL LOVINGS, in  
his individual capacity; NADEEM ASHRAF,  
in his individual capacity; MARSHA TODD,  
in her individual capacity; and ROBERT  
TODD, in his individual capacity,  
Defendants.

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CIVIL ACTION NO. 4:21-cv-00272

JOHN NICHOLAS, as temporary administrator  
of the Estate of Rhogen Nicholas and JO ANN  
NICHOLAS, individually and as an heir of  
the Estate of Rhogena Nicholas,  
Plaintiffs,

vs.

CITY OF HOUSTON; GERALD GOINES, in his  
individual capacity,  
STEVEN BRYANT, in his individual capacity;  
FELIPE GALLEGOS, in his individual  
capacity; ERIC SEPOLIO, in his individual  
capacity; MANUEL SALAZAR, in his individual  
capacity; THOMAS WOOD, in his individual  
capacity; OSCAR PARDO, in his individual  
capacity; FRANK MEDINA, in his individual  
capacity; CLEMENTE REYNA, in his individual  
capacity; CEDELL LOVINGS, in his individual  
capacity; NADEEM ASHRAF, in his individual  
capacity; MARSHA TODD, in her individual  
capacity; and ROBERT GONZALEZ, in his  
individual capacity,  
Defendants.

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VIDEO-RECORDED DEPOSITION OF  
ANDREW J. SCOTT  
(Pages 1 - 217)

Thursday, July 18, 2024

10:10 a.m. to 4:40 p.m.

LOCATION: Lexitas

2385 NW Executive Center Drive, Suite 100  
Boca Raton, Florida 33431

Stenographically Reported By:  
Michelle Payne

1 force that was used against the plaintiffs. And also  
2 review the supervision that was provided to the  
3 narcotics division, particularly Squad 15, and then also  
4 take a look at the agency's custom and practice, if you  
5 will, with regards to investigating officer involved  
6 shootings.

7 Q. And all the things that you just listed, is it  
8 your position that they fall within the expertise that  
9 you have regarding high liability police policies and  
10 procedures? Does that make sense?

11 A. Yes, sir. I think my testimony was police --  
12 high liability police practices and procedures.

13 Q. Oh, I'm sorry, I couldn't read my own writing,  
14 it says practices. So let me repeat the question.

15 Is your testimony that the areas that you just  
16 outlined, search warrants, use of force, supervision,  
17 and custom and practices regarding investigations of  
18 officers, all of those things fall within the high  
19 liability police practices and procedures area of  
20 expertise?

21 A. That is correct.

22 Q. In other words, if a person professes to be an  
23 expert in high liability police practice and procedures  
24 that person is qualified to talk about those four  
25 things?

1 A. Sure. Specifically related to this case.

2 Obviously my expertise expands beyond the four corners  
3 of my police report. Excuse me, my expert report.

4 Q. I understand that. I understand that we're  
5 talking about just as it relates to this case right now.

6 A. Then you are correct.

7 Q. All right. So we will get to your report and  
8 opinions later in the deposition, but what I want to  
9 find out now whether you consider yourself an expert in  
10 some other areas that were not listed regardless of  
11 whether you've been engaged to talk about it in this  
12 case. Okay?

13 A. Yes, sir.

14 Q. Do you consider yourself to be an expert in  
15 shooting reconstruction?

16 A. I wouldn't say I'm an expert in shooting  
17 reconstruction but I am very familiar with it having  
18 engaged in shooting and crime scene reconstructions over  
19 the course of my tenure and as a expert in police  
20 practices and procedures.

21 Q. But do you hold yourself out as an expert in  
22 shooting reconstruction?

23 A. Related to this case I do not.

24 Q. What about DNA analysis, do you consider  
25 yourself to be an expert in DNA analysis?

1 Q. Okay. And we'll get to the details like I  
2 said in a moment. If you look at pages two  
3 through seven of your report --

4 A. Yes, sir.

5 Q. -- you note that you reviewed 125 enumerated  
6 items of evidence or documents. Correct?

7 A. Yes, sir.

8 Q. I don't know if you've done the math, but  
9 would you agree that 91 of those 125 items are written  
10 HPD policies or procedures? And I'll just tell you I'm  
11 referring to items 48 through 125.

12 A. That appears to be the case.

13 Q. Okay. And the four discreet opinions that we  
14 just identified, would it be correct to say that those  
15 opinions do not criticize or deal with -- I shouldn't  
16 say deal with, let's stick with criticize. Those  
17 discreet opinions do not criticize any written policy or  
18 procedure of the Houston Police Department?

19 A. No, that was not within the realm of my -- the  
20 request by my clients to examine.

21 Q. Okay. So you weren't asked to determine  
22 whether or not you had any criticism of any written HPD  
23 policy or procedure; did I understand that correctly?

24 A. Correct, I was not asked to look into those  
25 policies from an expert perspective.

1 A. Yes.

2 Q. Do you agree that no written HPD policy or  
3 procedure authorized HPD officers to use excessive  
4 force?

5 A. No, I didn't see anything in the policies that  
6 suggested that.

7 Q. That would be quite unusual; wouldn't it?

8 A. Yes.

9 Q. Do you agree that no written HPD policy or  
10 procedure authorized HPD officers to fabricate  
11 information included in a search warrant?

12 A. Correct.

13 Q. That would also be unusual?

14 A. Yes.

15 Q. And in your career as a police officer I take  
16 it that you've never seen a written policy of a police  
17 department that told officers it's okay to fabricate  
18 information in a warrant?

19 A. Never in my experience.

20 Q. And the same would be true with respect to a  
21 policy that told officers it's okay to use excessive  
22 force, a written policy?

23 A. I've never seen that either.

24 Q. Now I want to talk to you real quick about  
25 conduct and what your report says about, quote,

1 "unlawful conduct." Okay. And let me try to tell you  
2 where I'm going with this.

3 The way I read your report the unlawful  
4 conduct that you contend caused the alleged  
5 constitutional violations in this case consist of three  
6 discreet areas of conduct. I'm going to go through  
7 those and just ask you if I'm reading your report  
8 correctly. Okay?

9 A. Sure.

10 Q. All right. The first instance of unlawful  
11 conduct that you claim caused the alleged constitutional  
12 violations in this case was Officer Goines lying on a  
13 warrant. Correct?

14 A. Correct.

15 Q. One of them?

16 A. That is correct, corroborated by the Houston  
17 Police Department.

18 Q. And then the second one I want to ask you  
19 about is -- excuse me, the second act that you contend  
20 is unlawful conduct is Officer Gallegos shooting  
21 Ms. Nicholas because you contend that she did not pose a  
22 threat. Is that correct?

23 A. Based on the totality of circumstances that is  
24 correct.

25 Q. Okay. And then the third one is Gallegos

1 firing the final shot at Tuttle because by then you  
2 contend that Mr. Tuttle no longer posed a threat. Is  
3 that correct?

4 A. That's correct.

5 Q. Okay. So I want to make sure that I'm clear.  
6 Is there any other instance of unlawful conduct that you  
7 contend was committed by the officers on the scene that  
8 caused the alleged constitutional violations other than  
9 these three that we just went over?

10 A. No.

11 Q. Okay. Doctor Scott, I want to jump to your CV  
12 and talk to you about some of that.

13 MS. SILVA: Hopefully you see that on your  
14 screen, sir, it's Exhibit 123.

15 A. I do.

16 BY MR. ODOM:

17 Q. Okay. Do you have Exhibit 123 in front of  
18 you?

19 MS. SILVA: Court reporter it's number eight  
20 if you want to hand opposing counsel a hard copy.

21 MR. BOURQUE: What is the document?

22 THE WITNESS: It's my CV.

23 MR. BOURQUE: Okay.

24 BY MR. ODOM:

25 Q. You ready?

1 certified as a police officer. Right?

2 A. No. So the courses that I'm illustrating here  
3 other than the law enforcement certification that we  
4 just discussed, these courses were taken voluntarily, or  
5 the agency recognizing that I'm being moved into a  
6 position as a detective needed formalized training in  
7 the topical area, for example, homicides or crime scene  
8 reconstruction, those types of things. And so depending  
9 on the position I was in I either had to take a certain  
10 course or the majority of those courses I took on my  
11 own.

12 Q. Okay. I think that answers it. Okay. Now  
13 let's move back to your report. I want to start on  
14 page 16 with your opinion number one. Are you there?

15 A. Yes, sir.

16 Q. Okay. Your opinion number one says "the  
17 search warrant obtained for 7815 Harding Street,  
18 Houston, Texas by HPD Officer Gerald Goines was based on  
19 fabricated information and evidence not probable cause.  
20 Obtaining and executing a search warrant without  
21 probable cause is contrary to well-established police  
22 practices and official Houston Police Department  
23 policy."

24 Did I read that correctly?

25 A. Yes, sir.



1 Q. Are you saying that you went back and did some  
2 independent investigation from HPD's internal  
3 investigation to reach this conclusion, or are you  
4 saying that you read what HPD concluded and said yeah,  
5 that's right?

6 A. It's the latter part of your question. I  
7 reviewed what HPD did, I reviewed the statements, I  
8 reviewed everything that was investigated, and as a law  
9 enforcement expert I am in agreement with what HPD  
10 determined.

11 Q. Okay. Turn to the last paragraph under  
12 opinion one which is on page 20 paragraph 1.7.

13 A. Yes, sir.

14 Q. You there?

15 A. Yes.

16 Q. I want to direct your attention to the last  
17 sentence which says "it is more likely than not in a  
18 degree of professional certainty that if the search  
19 warrant obtained by Officer Goines had not been acquired  
20 Mr. Dennis Tuttle and Ms. Rhogena Nicholas would not  
21 have been shot and killed by HPD officers on January 28,  
22 2019."

23 Did I read that correctly?

24 A. Yes, sir.

25 Q. What you're saying there is if the warrant

1 7815 Harding Street, Houston, Texas, by HPD Officer  
2 Goines was based on fabricated information and evidence  
3 not probable cause. Is that correct?

4 A. That's correct.

5 Q. And you further state on page 20 in  
6 paragraph 1.7, based on the facts of this case,  
7 supported by HPD IA investigations into this incident,  
8 there is no doubt that Officer Goines falsified the  
9 probable cause affidavit and search warrant for 7815  
10 Harding Street. Is that correct?

11 A. Yes, sir.

12 Q. You do not state in your report that Steven  
13 Bryant assisted Gerald Goines in falsifying information  
14 used to obtain the search warrant. Correct?

15 A. That's correct.

16 Q. And have you seen any evidence that Mr. Bryant  
17 assisted Gerald Goines in falsifying information used to  
18 obtain the search warrant?

19 A. No.

20 Q. You do not state in your report that Mr.  
21 Bryant was involved in drafting the probable cause  
22 affidavit?

23 A. Correct.

24 Q. And have you seen any evidence that Mr. Bryant  
25 was involved in drafting that probable cause affidavit

1 for the search warrant?

2 A. No.

3 Q. Further, you do not state in your report that  
4 Mr. Bryant was involved in presenting the search warrant  
5 application to the magistrate judge who signed it. Is  
6 that correct?

7 A. Correct.

8 Q. Have you seen any evidence that Mr. Bryant was  
9 involved in sending the search warrant application to  
10 the magistrate judge?

11 A. No.

12 Q. Is it fair to say that what your report states  
13 or suggests is that Mr. Bryant was involved in cover-up  
14 for Gerald Goines after the shooting took place?

15 A. Correct.

16 Q. And so basically what -- what is alleged that  
17 Mr. Bryant did was to help Goines cover-up whatever his  
18 prior misconduct was after the shooting. Is that  
19 correct?

20 A. Yes, sir.

21 Q. On page 28 of your report opinion two states  
22 in part that the failure to supervise identified above,  
23 was the moving force or proximate cause of the  
24 underlying constitutional violations by Goines and  
25 Bryant in the moving force or proximate cause of the

1 death of Tuttle and Nicholas. Is that correct?

2 A. Yes.

3 Q. Did you form an opinion that Mr. Bryant  
4 violated the constitutional rights of Mr. Tuttle in  
5 relation to the Harding Street raid?

6 A. No, I can't say that he contributed to the  
7 unconstitutional actions prior to the raid. But  
8 obviously engaged in the cover-up afterwards.

9 Q. But that cover-up would not be a violation of  
10 Mr. Tuttle's constitutional rights. Is that correct?

11 A. You're correct, sir.

12 Q. Similarly, did you form an opinion that Mr.  
13 Bryant violated the constitutional rights of Ms.  
14 Nicholas in relationship the Harding Street raid?

15 A. I don't believe I did.

16 Q. And is it your opinion that there was not a  
17 violation of Ms. Nicholas's constitutional rights by Mr.  
18 Bryant?

19 MR. SMITH: Object to the form.

20 A. Correct.

21 BY MR. NACHTIGALL:

22 Q. So what were -- and correct me if I'm wrong  
23 here, but what were the constitutional violations by Mr.  
24 Bryant that were either a moving force or proximate  
25 cause of the death of Mr. Tuttle and Ms. Nicholas?

1 A. Basically there were none in reference to the  
2 acquisition of the affidavit, although Officer Bryant  
3 did engage in breaking down the door which allowed the  
4 team to gain entry based on the fictitious warrant.

5 Q. And at the time that he broke down that door  
6 to gain entry we don't have information that would lead  
7 us to believe that he knew that it was based on a  
8 falsified search warrant. Is that correct?

9 A. Correct, we have no information in the record.

10 MR. NACHTIGALL: I don't have any more  
11 questions. Thank you.

12 MR. DAY: Al, this is Dwayne Day, I've just  
13 got a very, very quick clarification for the  
14 witness.

15 CROSS EXAMINATION

16 BY MR. DAY:

17 Q. Mr. Scott, my name is Dwayne Day I represent  
18 Gerald Goines in this civil matter. Have you been  
19 retained or asked to testify on behalf of the Harris  
20 County District County's Office in the criminal case?

21 A. I have not.

22 Q. Okay. Let's talk about your opinion number  
23 three. I just want -- I think Al did a good job of  
24 clearing this up but I want to make sure it's crystal  
25 clear. In opinion number three you put in there while